

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

PRESTON W. SIMPSON,

Plaintiff,

v.

ROBERT N. MAYER, et al.,

Defendants.

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No. 1:20-CV-159 DDN

OPINION, MEMORANDUM AND ORDER

This administratively closed, civil matter is before the Court on motions from self-represented Plaintiff Preston W. Simpson to correct the record (ECF No. 21) and to reopen this case (ECF Nos. 24, 27). In September 2020, this case was stayed and administratively closed pending final disposition of Plaintiff's criminal proceeding in state court. ECF Nos. 9-10. Because it now appears that Plaintiff's related state-court criminal matter has been dismissed, the Court will grant Plaintiff's motion to reopen this case.

Background

Plaintiff filed his complaint on the Court's 'Civil Complaint' form and named sixteen defendants. ECF No. 1 at 1-7. Plaintiff alleged multiple claims, including false arrest, and he referenced his pending state court case for failure to register as a sex offender.

In order to understand the allegations of Plaintiff's complaint, the Court reviewed the state court criminal case number provided by Plaintiff: "15SD-CR-00840-01." *Id.* at 11. Independent review on Missouri Case.net, the State of Missouri's online docketing system, clarified that Plaintiff was charged on August 4, 2015, in Stoddard County, Missouri, with one count of failure to register as a sex offender. *State v. Simpson*, No. 15SD-CR00840-01 (35th Jud. Cir. 2015). On

October 7, 2015, Plaintiff pled guilty and was sentenced to the Missouri Department of Corrections (“MDOC”) for six (6) years. However, the Court suspended execution of his sentence and placed him on probation for three years. Unfortunately, twelve days after his sentencing, Plaintiff was arrested for shoplifting. On August 22, 2016, the Court revoked Plaintiff’s probation and executed his six (6) year sentence.

On February 14, 2017, Plaintiff sought post-conviction relief by filing a motion to vacate, set aside, or correct the judgment or sentence in state court. *Simpson v. State*, No. 17SD-CC00013 (35th Jud. Cir. 2017). On January 24, 2019, Plaintiff’s amended motion for post-conviction relief was sustained, and his plea and sentence were vacated. In February 2019, the state prosecutor announced that the State was continuing with its criminal prosecution of Plaintiff for failure to register as a sex offender (case no. 15SD-CR00840-01). However, Plaintiff was released on bond.

On April 30, 2020, the state court issued a warrant on Plaintiff, finding probable cause that he had violated his bond. One day earlier, Plaintiff had been charged with domestic assault, unlawful possession of a firearm, unlawful use of a weapon, and resisting arrest in Stoddard County. *State v. Simpson*, No. 20SD-CR00403 (35th Jud. Cir. 2020). In May 2020, the Missouri state court ordered a mental examination of Plaintiff. The State Department of Mental Health doctor found Plaintiff competent in July 2020, but Plaintiff’s counsel filed objections to the finding of competency in August 2020. The case was set for an October 2020 hearing.

Case Procedural History

In an Order issued September 28, 2020, the Court summarized the allegations of Plaintiff’s complaint and concluded that Plaintiff was attempting to assert civil rights violations under 42 U.S.C. § 1983. ECF No. 9 at 7. However, since his § 1983 claims were based on the same facts and circumstances giving rise to his criminal charges in *State v. Simpson*, No. 15SD-CR00840-01

(35th Jud. Cir. 2015), the Court wanted to avoid making any rulings related to a pending state court criminal matter. *Id.* at 7-8 (citing *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007)). As such, the Court stayed and closed this case on September 29, 2020, pending final disposition of state court criminal proceedings – including appellate and post-conviction proceedings – against Plaintiff. ECF Nos. 9-10. The Court directed Plaintiff to notify the Court in writing when there was a final disposition of the criminal charges pending against him in state court.

Current Status of Plaintiff's State Court Proceedings

An independent search for Plaintiff's criminal case *State v. Simpson*, No. 15SD-CR00840-01 (35th Jud. Cir. 2015) on Missouri Case.net, returned no results. However, in his other criminal case, *State v. Simpson*, No. 20SD-CR00403-01 (35th Jud. Cir. 2020), Plaintiff pled guilty on October 6, 2021, to unlawful possession of a firearm and he was sentenced to seven (7) years' incarceration. The three other pending charges in that case (for domestic assault, unlawful use of a weapon, and resisting arrest) were dismissed.

Plaintiff's Motion to Correct the Record (ECF No. 21)

On October 18, 2021, Plaintiff filed a motion to correct the record in which he explains that he unintentionally misstated his income sources on his motion for leave to proceed *in forma pauperis* (ECF No. 2). ECF No. 21 at 1. Plaintiff asks that the record be corrected to reflect that through an "other source" he has "average monthly deposits of \$52.92." Because Plaintiff submitted an inmate account statement in support of his motion to proceed *in forma pauperis*, the Court was aware of this other source of income and used the correct average monthly deposit amount in calculation of Plaintiff's initial partial filing fee amount. *See* ECF No. 9 at 2. Therefore, because the correct numbers were used, there was no harm done by Plaintiff's mistake and no need to correct the record in this matter. Plaintiff's motion will be denied as moot.

Plaintiff's Motions to Reopen the Case (ECF Nos. 24, 27)

Plaintiff filed two motions to reopen this case in October 2021. ECF Nos. 24, 27. The first motion, titled "Motion to Reopen Above Sighted Case Upon Final Disposition of Underlying Alleged Criminal Offense," states that Plaintiff's state court case "State v. Simpson, Case No. 15SD-CR00840-01 (35th Jud. Cir. 2015)" was dismissed on October 6, 2021, "so the 'stay' placed on [this case] can be lifted now." ECF No. 24 at 1. Similarly, the second motion requests that the Court reopen this matter because Plaintiff is ready to proceed and a "final disposition" was reached in "State v. Simpson" on October 7, 2021. ECF No. 27 at 1. Based upon Plaintiff's averments, it appears his related state-court matter has reached final disposition and it is appropriate to reopen this case.

Accordingly,

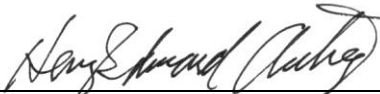
IT IS HEREBY ORDERED that Plaintiff's motion to correct the record [ECF No. 21] is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff's motion to reopen this case [ECF No. 24] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court shall reopen this action.

IT IS FURTHER ORDERED that Plaintiff's second, duplicative motion to reopen this case [ECF No. 27] is **DENIED** as moot.

Dated this 1st day of December, 2021.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE